

considering adopting a standard methodology for measuring interference in all paging bands.<sup>56/</sup> AirTouch's analysis reveals that it would be extremely disruptive and burdensome for the Commission to alter drastically the service and interference area contours for the sake of uniformity. As is discussed in greater detail below, the public interest will be best served by the Commission retaining for grandfathered stations the existing protection criteria that have served the industry -- and the public -- so well to date.<sup>57/</sup>

26. The Commission proposes to substitute a formula for determining service and interference contours in lieu of continuing to use the fixed radius protection now provided for 931 MHz channels<sup>58/</sup> and in

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<sup>56/</sup> Currently, UHF and VHF Part 22 channels use Carey contours, while 900 MHz Part 22 and Part 90 channels use fixed mileages. Part 90 UHF and VHF channels have no interference contours, but the Commission should adopt the ones used for their Part 22 counterparts.

<sup>57/</sup> In the case of the lower band Part 22 channels, this means the Commission should retain the mathematical formulas and contour overlap provisions recently adopted in the Part 22 Rewrite Order as proposed in Paragraph 48 of the Notice. See Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services, Report and Order, CC Docket No. 92-115, 9 FCC Rcd. 6513, 6503-64 (1994).

<sup>58/</sup> Notice, paras. 49-55. See 47 C.F.R. §22.537(e), (f). See also Table E-1 and E-2, 47 C.F.R. §22.537.

lieu of the standard minimum geographic separations provided for 929 MHz exclusive channels.<sup>59/</sup> The abandonment of the existing protection criteria raises a number of serious concerns, and will not serve the public interest.

27. First, taking this approach would place an enormous burden on paging carriers and on the Commission. The engineering data that appears on 931 MHz licensing does not include all of the information that would be necessary in order to calculate service and interference contours using the new formula.<sup>60/</sup> Similarly, the technical data included with applications for 929 PCP frequencies does not provide the information called for by the formula.<sup>61/</sup> In essence, imposing the formula on preexisting facilities

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<sup>59/</sup> See 47 C.F.R. §90.495(b)(2).

<sup>60/</sup> The license only contains the licensed location, none of the other engineering parameters. Facilities may have been changed at the site (e.g., changed face of tower) but since this did not change the coverage contour, it may not be reflected in engineering data. This change would have a dramatic effect on the calculated contours.

<sup>61/</sup> The license only contains the HAAT and effective radiated power -- not the radial information. Since the application also does not contain any of this information, licensees can construct a site numerous different ways that would have resulted in the same standard minimum geographic separations but will have different calculated contours.

would require a retroactive reengineering of virtually every 900 MHz paging facility in the country. Any such ruling by the Commission is completely at odds with the deregulatory direction the Congress and the Commission are and should be taking.<sup>62/</sup>

28. Second, AirTouch believes that the proposed formula does not accurately represent real world service and interference contours and will result in interference where none exists today. AirTouch's analysis reveals that utilizing the formula would cause transmitters to be placed too close to existing ones -- thus causing interference. The public interest is not

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<sup>62/</sup> AirTouch notes that the Commission has initiated a number of proceedings designed to reduce regulatory burdens and streamline paperwork. "Commission Proposes to Eliminate or Reduce Common Carrier Reporting Requirements", CC Docket No. 96-23, Public Notice, Report No. DC-96-16, released February 26, 1996; Streamlining the International Section 214 Authorization Process and Tariff Requirements, Report and Order, IB Docket No. 95-118, FCC 96-79; released March 13, 1996; "FCC Reduces Regulatory Burdens for International Telecommunications Services", IB Docket No. 95-119, Public Notice, released February 29, 1996; and Reorganization and Revision of Parts 1, 2, 21 and 94 of the Rules to Establish a New Part 101 Governing Terrestrial Microwave Fixed Radio Services, Report and Order, WT Docket No. 94-148, released February 29, 1996. The public interest would not be served by undermining these worthy initiatives by ordering a burdensome reengineering of existing 900 MHz paging facilities just to satisfy a general urge for "uniformity".

served by a formula that would create interference because it is inconsistent with actual operating conditions.<sup>63/</sup> In addition, using the formula would create non-contiguous service areas in several geographic areas where actual market experience indicates AirTouch is enjoying efficient and reliable service.

29. Third, a transition to the formula is complicated by prior Commission actions which eliminated the requirement that licensees submit to the Commission applications for interior sites.<sup>64/</sup> Fill-ins that qualified as interior sites using the fixed radii specified in Part 22 of the rules might not remain interior if their parameters and those of other perimeter sites needed to be recalculated using the new formula. AirTouch anticipates not only extensive paperwork but also a high prospect of litigation as carriers seek to protect and maintain sites that are not matters of public record with the Commission.

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<sup>63/</sup> AirTouch Paging attributes the differential to a variety of factors including enhanced coverage that can result when multiple sites simulcast, increased paging receiver sensitivity, and terrain factors.

<sup>64/</sup> Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services, Report and Order, CC Docket No. 92-115; 9 FCC Rcd. 6513, 6518 (1994).

30. On balance, the Commission should recognize that the existing service and interference contours defined in Part 22 of the rules for 931 MHz facilities have served the public interest by preventing interference between co-channel licensees and should not be altered for determining incumbent's interference and service areas.<sup>65/</sup> The public interest is also not served by retroactive imposition of a revised service area because it results in the involuntary modification of licenses without Public Notice and a hearing. Instead, the Commission should utilize the identical table from Part 22 of the rules for existing systems on both 929 and 931 frequencies.<sup>66/</sup>

31. Once the Commission confirms that all pre-existing 900 MHz paging facilities shall have grandfathered contours as specified in Part 22 of the rules, it might consider using a modified formula for future sites. Attachment 1 hereto is an engineering statement prepared by Comp Comm, Inc. that sets forth

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<sup>65/</sup> Carriers have designed systems with a reasonable expectation that they would continue to enjoy the service area and protection granted to them under the current rules.

<sup>66/</sup> This uniformity makes sense since the separation criteria specified in Part 90 of the rules were in fact derived from the protection criteria earlier adopted under Part 22 for the technically comparable 931 MHz frequencies.

alternative formulas that might be more suitable because they more closely approximate real world experience.

**G. Maximum Power and Height-Power Limits**

32. The Commission proposes to retain the current maximum ERP limited for the various lower band paging channels.<sup>67/</sup> AirTouch agrees. These technical standards have allowed paging services to proliferate with a minimum of interference, and need not be changed at this time.<sup>68/</sup> However, the public interest is served by conforming the 929 MHz PCP channels height power rules to those found in the 931 MHz band. Because the services provided to the public in these bands are virtually indistinguishable, conforming the technical requirements serves the public interest.

**H. Border Areas**

33. The Commission proposes that in the absence of a co-carrier agreement between adjacent licensees, operators be required to step down their power at border areas in order to avoid encroachment into adjacent territories.<sup>69/</sup> However, due to the

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<sup>67/</sup> Notice, para. 58.

<sup>68/</sup> AirTouch proposes, however, that the Commission utilize the Part 22 tables for VHF and UHF shared channels.

<sup>69/</sup> Notice, para. 62.

previously-identified problems with the proposed formula for 900 MHz stations, AirTouch recommends that the Commission use instead the alternative proposed by Comp Comm as the basis for the power reductions to protect adjacent systems.

34. AirTouch also agrees that all geographic areas in the United States should be licensed on a uniform basis without distinguishing those territories that happen to be near the international borders of Mexico and Canada. As was demonstrated in the narrowband PCS auction, carriers are capable of determining whether spectrum is usable at border areas under the applicable treaties and protocols, and can factor these determinations into their application and bidding strategies without special elaborate Commission-imposed procedures.

#### **I. Eligibility**

35. The Notice tentatively concludes that both incumbents and new entrants should be allowed to apply for geographic licenses without restrictions on eligibility.<sup>70/</sup> As a general rule, AirTouch supports licensing procedures that enable competitive forces rather than Commission regulations to separate winners from losers. Consequently, AirTouch supports open

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<sup>70/</sup> Notice, para. 66.

eligibility. Indeed, the robust competitive state of the paging industry today can be attributed in large measure to prior Commission actions which have removed barriers to entry for newcomers seeking to provide paging services.<sup>71/</sup>

36. However, the public interest considerations which support open entry should not be construed by the Commission to require that channels which already support extensive systems, and on which white space is only available in marginal peripheral areas, need be subject to lengthy auction procedures to provide opportunities for a theoretical competing applicant who may never materialize.<sup>72/</sup> An open entry policy does not preclude the Commission from adopting reasonable means to avoid mutual exclusivities in the public interest. As is discussed in greater detail within,

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<sup>71/</sup> For example, the Commission eliminated prior state certification requirements, financial showing requirements, and public need showing requirements in an effort to encourage increased entry.

<sup>72/</sup> If a market area has no white space at all, the market area license would merely be a lottery ticket or a ticket to mischief -- neither of which support the public interest. Further, when an incumbent already serves so much of the market that a market area licensee will not even meet the ultimate construction deadlines, then the public interest demands that the Commission not allow the opportunity for mischief to occur.



AirTouch proposes that licensees who meet very high current construction thresholds not be subjected to competing applications on their fully developed channels.<sup>73/</sup>

**J. Channel Aggregation Limit**

37. The Commission seeks comment on whether an aggregation limit is appropriate for paging frequencies, and if so, what that limit should be.<sup>74/</sup> No limit is necessary nor would it serve the public interest. The Notice correctly identifies 120 common carrier and 53 private carrier paging channels that are available.<sup>75/</sup> This relatively large number of frequencies has resulted in a proliferation of paging companies.<sup>76/</sup> No carrier is remotely close to having either the channel position or the market power to dominate the paging industry.<sup>77/</sup> Under these circumstances, the public interest will not support the adoption of channel aggregation limits. This is

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<sup>73/</sup> See discussion infra at Section III.D.

<sup>74/</sup> Notice, paras. 68-69.

<sup>75/</sup> Notice, para. 3.

<sup>76/</sup> AirTouch Paging learned recently that Motorola claims to have over 600 major customers for paging equipment.

<sup>77/</sup> Indeed, even the largest carrier, PageNet, has a relatively small nationwide share of the customers -- approximately 15-20%.

particularly true since any such limit would be inherently arbitrary.

38. Channel aggregation limits also are inappropriate in view of the fact that other wireless service providers who possess vastly greater band-width than paging companies are allowed to provide paging services. For example, cellular and PCS licensees, which hold authorizations for 30 MHz and up to 40 MHz of spectrum respectively, are allowed to provide and do provide paging services.<sup>78/</sup> It would be fundamentally unfair to adopt an arbitrary limit on the ability of paging carriers to aggregate 25 kHz paging channels when they are competing against wide band licensees who possess much more spectrum.

### **III. Competitive Bidding Issues**

39. As earlier noted, AirTouch was an active and successful participant in both the nationwide and regional narrowband PCS auctions. Additionally, AirTouch's parent, AirTouch Communications, has been a prevailing participant in the wideband PCS auctions.<sup>79/</sup> Consequently, AirTouch is fully familiar

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<sup>78/</sup> For example, Sprint Spectrum, one of the early entrants to the PCS market, is providing paging service incidental to its PCS offering.

<sup>79/</sup> AirTouch Communications holds a 25% interest in PCS PrimeCo, a winner of a substantial number of  
(continued...)

with the simultaneous multi-round electronic auction procedures upon which the proposed competitive bidding mechanism for paging is based. Generally, AirTouch supports the approach taken by the Commission and believes it will serve the public interest. However, the Commission has properly recognized that there are certain aspects of the paging business, and the channels that are available for auction, that require specially tailored procedures. These Comments focus upon the aspects of the forthcoming paging auctions that require special attention.

**A. License Grouping**

40. In determining how paging licenses should be grouped for competitive bidding purposes, the Commission must strike a delicate balance between the desire to make multiple channels available simultaneously which may prove to be substitutes for one another, while avoiding auctioning so many licenses at one time that the auction becomes unmanageable.<sup>80/</sup> AirTouch recommends that this balance be struck by

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<sup>79/</sup> (...continued)

broadband PCS licenses in markets where the owners did not already hold cellular authorizations.

<sup>80/</sup> As AirTouch pointed out earlier, most paging channels are not fungible because incumbents have built systems with different coverages on each channel.

conducting an initial auction of all 929 MHz and 931 MHz licenses for all MTAs, followed by a second auction for the remaining Part 22 and Part 90 lower band channels. This proposal serves the public interest in several ways. First, because the 900 MHz band became available most recently for paging purposes, it has exhibited the greatest licensing activity of late. This argues in favor of conducting auctions for this band first. Second, technical similarities between 931 and 929 operations make all frequencies in these ranges comparable for service purposes. Indeed, many carriers are offering comparable services on 931 MHz and 929 MHz systems in a manner that is transparent to the ultimate subscriber. These factors weigh in favor of auctioning off the 929 and 931 MHz paging channels at the same time in the same auction.

41. AirTouch also recognizes that auctioning off all 900 MHz paging licenses in all MTAs in a simultaneous multiple round auction will put a considerable number of licenses in play at one time. AirTouch, however, believes the process will remain manageable. In actuality, participants in the auction will likely have a relatively small number of channels

and geographic areas of primary interest.<sup>81/</sup> AirTouch is confident that all applicants who properly prepare for the auction will be able to monitor the licenses of interest to them efficiently.

**B. Bidding Procedures**

42. The Commission proposes to adopt a minimum bid increment of 5% of the high bid in the previous round or \$0.01 per activity unit, whichever is greater.<sup>82/</sup> The Commission also proposes to retain the discretion to vary the minimum bid increments.<sup>83/</sup> AirTouch supports these proposals as being reasonable methods to ensure timely closure of the auction.

43. The most important aspect of the proposed auction procedure is the market-by-market, frequency-by-frequency stopping rule that is proposed at Paragraph 83 of the Notice. The public interest supports this modified stopping rule because it is absolutely necessary to prevent paging auctions from

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<sup>81/</sup> AirTouch assumes that many of the channels will only have one truly interested applicant. Therefore, the Commission can expect little across the board bidding.

<sup>82/</sup> Notice, para. 82.

<sup>83/</sup> Although AirTouch in the past argued for fixed rules in this area, the Commission's actions in the two narrowband PCS auctions and the broadband PCS auction, have shown the wisdom of allowing Commission flexibility in this area.

becoming interminable, thereby delaying critical system expansions that are necessary to permit carriers to serve the public. The Commission has properly recognized that many paging channels are occupied by extensive paging systems that cover vast portions of the area population. No public interest benefit would accrue if the Commission were to cause such frequencies to be tied up in a lengthy auction process by a stopping rule which caused all markets and frequencies to remain open until all bidding had ceased elsewhere.<sup>84/</sup> AirTouch would, however, suggest one minor refinement to the market-by-market, frequency-by-frequency stopping rule. AirTouch suggests that bidding close on each license after two rounds pass in which no new acceptable bids are submitted for that particular license, rather than one round as proposed by the Commission.<sup>85/</sup> This modification will provide bidders with a last clear chance to bid on a frequency with notice that bidding on that frequency in a particular market is about to close in the absence of a

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<sup>84/</sup> Indeed, since many of the channels have extensive incumbent licensing, no two channels are the same. It makes no sense to require all channels to remain open when only one has any real space left and is the subject of interest to two or more bidders.

<sup>85/</sup> Notice, para. 83.

bid. It also will provide a margin of error so that applicants will not inadvertently omit bidding on a particular license only to find that their opportunity to correct their oversight will have been lost because the channel has closed after one open round.

44. The market-by-market stopping rule also has the incidental benefit of holding promise that the number of licenses in play in the auction will get down to a manageable number in short order. Given the number of paging licenses will be involved in the auction, reaching early closure on some frequencies should be viewed as a benefit of the proposed stopping rule.<sup>86/</sup>

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<sup>86/</sup> AirTouch supports the Commission proposal to retain discretion to vary the duration of bidding rounds or the interval at which bids are accepted. It would suggest bidding on an every other day basis during the first week or so of the auction with the expectation that the Commission would run one or two rounds per day relatively soon after the auction commenced.

45. In view of AirTouch's support of a market-by-market stopping rule, it agrees with the Commission's tentative conclusion that it is unnecessary to implement an activity rule.<sup>87/</sup> The fact that bidding on certain channels may close promptly will act as an adequate incentive for applicants to maintain a high level of activity in the auction or risk being shut out.

**C. Anti-Collusion Rules**

46. The public interest requires that the Commission adopt safeguards against collusion in paging auctions. However, there are certain aspects of the paging industry that require special attention in the anti-collusion rules to ensure that pro-competitive activities do not run afoul of the rules. For example, as the Commission is aware, the paging industry is undergoing considerable consolidation which has resulted in a proliferation of assignment and transfer applications reflecting the merger or acquisition of existing companies. This is a healthy, pro-competitive process which enables companies to achieve economies of scope and scale and thereby continue to reduce the prices they charge for service to the public. The Commission should not adopt any auction rule that

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<sup>87/</sup> Notice, para. 84.



interferes with these pro-competitive free market processes.<sup>88/</sup>

47. However, an overly broad anti-collusion rule could have a chilling effect on the consolidation. If two companies who happen to be bidding on licenses in the same market desire to merge, they could be subjected to challenges by third parties claiming that discussions incidental to the purchase and sale transaction necessarily implicated bidding information and bidding strategy.<sup>89/</sup>

48. AirTouch recommends that the Commission adopt a safe-harbor for companies in this situation which permits them to show that they have implemented certain safeguards to prevent the sharing of bid information. A company should be able to protect itself by having personnel that are privy to that company's bidding strategy provide certificates to management indicating that they understand the

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<sup>88/</sup> Consolidation is pro-competitive because it allows for both economies of scale and scope, but also allows companies to compete against other large competitors. It also allows companies to have the necessary size to develop and offer new services such as narrowband PCS. This process should not be halted.

<sup>89/</sup> Given the rapid pace of consolidation, it is not unforeseeable that two companies may not be engaged in substantive discussions at the start of the auction process, but will be in full swing by the time bids are required.

Commission's rules regarding anti-collusion and that they have not and will not discuss bids or bidding strategy with their counterparts in an acquired or acquiring company. Management should in turn be allowed to rely upon these certificates to certify to the Commission compliance with the anti-collusion rules notwithstanding the pendency of a purchase and sale transaction. Absent a prima facie showing by a challenger that the certification is false, these companies should be free to proceed with their transaction without regard to the anti-collusion rule.

49. The public interest also demands a safe harbor for those carriers who have an existing co-carrier arrangement with a licensee operating on a common channel in an adjoining territory.<sup>90/</sup> Co-channel licensees with cooperative arrangements must communicate regularly in order to provide reliable and efficient service to the public. The Commission should not adopt an overly broad anti-collusion rule that discourages these useful inter-carrier exchanges. Consequently, an exception to the anti-collusion rule is required which permits carriers who have inter-

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<sup>90/</sup> These arrangements are fairly typical on the VHF and UHF paging channels because they are not licensed to one licensee as extensively as 900 MHz paging channels. For example, A+ Network's 152.48 MHz nationwide system of affiliates.

carrier agreements on a particular channel in adjacent market areas to continue with routine inter-carrier coordination within the ordinary course of their businesses.<sup>21/</sup>

**D. Pre-auction Application Procedures**

50. The public interest demands that the Commission adopt a procedure whereby channels which already are extensively deployed throughout an MTA by an existing carrier be exempted from the auction procedure. AirTouch suspects that there are many instances where the channel is already licensed and providing service to more than 70% of the population of the MTA. It makes no sense for these licenses to be auctioned since the market area licenses cannot meet the construction requirements. One possibility would be for the Commission to allow a brief window of opportunity before the auction for incumbents to certify that 70% of the population within an MTA is encompassed within applicable service area contours of operating station locations. Other interested parties should be given a brief period<sup>22/</sup> to file a challenge

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<sup>21/</sup> These same public interest considerations also require broad partitioning ability of licenses. The Commission must allow two licensees which are already licensed in an MTA to partition it.

<sup>22/</sup> AirTouch recommends 15 days after public notice.

to the incumbent's showing. If the challenger demonstrates that the incumbent fails to meet the 70% threshold, the subject channel would be made available for auction. Otherwise, the incumbent, who had already met and exceeded the 5 year build-out requirement, would receive the market area license.<sup>93/</sup>

51. This result is fully consistent with the Commission's auction authority as created in the Omnibus Budget Reconciliation Act of 1993. The Act specifically provides that

"Nothing in this subsection [authorizing the use of auction], or in the use of competitive bidding, shall...be construed to relieve the Commission of the obligation in the public interest to continue to use... **threshold qualifications**, ...in order to avoid mutual exclusivity in application and license proceedings".<sup>94/</sup>

Thus, it is fully within the Commission's power to create a threshold qualification requirement that says only applicants who serve 70% of the population in an MTA on a particular channel shall be eligible to file

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<sup>93/</sup> This would promote the public interest by allowing existing consumers of a system to continue to enjoy expanding coverage and short prompt call delivery.

<sup>94/</sup> Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, codified at 47 U.S.C. §§309(j)(6)(E) (emphasis added).

for the "white space" that covers the remaining 30% of the market.<sup>25/</sup>

52. AirTouch is concerned about the anti-competitive effects of not adopting such a rule. As the Commission knows, the paging industry is highly competitive and in the past was marked by a substantial amount of regulatory arranging to get advantage. AirTouch is concerned that the auction will give competitors an ability to use the auctions for anti-competitive purposes. A well heeled competitor could decide to use the auction to limit the ability of a competitor to meet market demands and thus force them into a sale to the well heeled competitor. This is clearly anti-competitive and is a natural result of rules which might permit bids on channels which cannot be built-out. The public interest demands some

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<sup>25/</sup> AirTouch Paging believes that this threshold eligibility requirement will have no discernable effect on the revenues raised in the auction since there should be few if any legitimate new entrants in the auction who would chose to focus their bidding efforts on a channel that already is so fully occupied by another. Nevertheless, even if adopting this threshold requirement was to have a modest budget impact, AirTouch Paging notes that the 1993 Budget Act specifically provides that the Commission should not base a finding of public interest, convenience, and necessity solely or predominantly on the expectation of federal revenues from the use of a system of competitive bidding. 47 U.S.C. §309(j)(7)(b).

solution to this problem. AirTouch suggests that the 70% proposal solves this problem.<sup>96/</sup>

**E. Amendments and Modifications**

53. AirTouch agrees that the public interest is served by the Commission's proposal to provide applicants with a reasonable opportunity to correct minor defects in their short-form applications prior to the paging auction. The harsh results that occurred in some instances under the "letter-perfect" standard previously used for cellular applicants are best avoided.<sup>97/</sup> Moreover, the objective in an auction scenario should be to encourage rather than discourage qualified bidders.

**F. Upfront Payments**

54. AirTouch believes that the Commission's proposal on upfront payments result in unintended consequences in the paging auction. In prior auctions, the Commission allowed applicants to check a box on the FCC Form 175 to indicate that they were interested in

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<sup>96/</sup> The Commission has already itself identified this possible anti-competitive use of auctions in its 800 MHz SMR Order. Paging is even more competitive than 800 MHz SMR with a history of using regulatory processes to hamstring competitors.

<sup>97/</sup> Once again, the Commission should avoid rules which do little to promote competition, but can be used anti-competitively.

being deemed eligible to bid on "All" available licenses.<sup>98/</sup> Many applicants checked this box even if they had relatively limited objectives in the auction, either because it was simpler than identifying every particular frequency for which they sought to bid, and/or because it helped mask their bidding strategy. Applicants were then allowed to maintain their eligibility on all licenses even if they submitted an upfront payment that would only enable them to bid on an extremely small number of licenses in relatively confined geographical areas.<sup>99/</sup> The net effect was a large proliferation of "phantom" mutual exclusivities (i.e., situations in which certain applications were deemed mutually exclusive when in fact the applicants had no bona fide intention of bidding on the same channels in the same area).

55. The simplest way for the Commission to solve this problem is to require applicants to identify every specific channel for which they intend to bid in

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<sup>98/</sup> This made some sense in auctions where the channels were relatively fungible. In the paging bands, individual channels will have much different states of current occupancy, making it less likely that the channels are viewed as perfect substitutes for one another.

<sup>99/</sup> For example, an upfront payment high enough to allow a wide band PCS applicant to bid on the New York MTA subsumed in it eligibility to bid on all lesser markets (i.e., every market).

each MTA.<sup>100/</sup> Then, a separate upfront payment should be required with respect to each such listed channel in order to guarantee a seriousness of intent. Specifically, AirTouch recommends a minimum upfront payment of \$5,000 per channel, per MTA or \$0.02 per activity unit, whichever is greater. This approach not only will avoid artificial mutual exclusivities, but will serve to deter the kind of speculation that took place in the IVDS auction when the Commission failed to adopt a sufficient upfront payment requirement to deter insincere applicants.

#### **G. Other Auction Procedures**

56. The Notice sets forth specific Commission recommendations with regard to bid withdrawal, default and disqualification,<sup>101/</sup> long-form applications,<sup>102/</sup> petitions to deny and limitations on settlements.<sup>103/</sup> These proposals generally correspond to similar requirements adopted in other wireless auction contexts, and are supported by the public interest for

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<sup>100/</sup> For serious bidders this should not be a problem. Indeed, since the channels are not fungible, the serious bidders will probably have no interest in channels on which they cannot complete construction.

<sup>101/</sup> Notice, para. 107.

<sup>102/</sup> Notice, para. 108.

<sup>103/</sup> Notice, paras. 109-110.



use in the forthcoming paging auctions as well. Additionally, AirTouch proposes that auction winners be allowed to proceed with the construction of facilities in market areas where they are the high bidder at their own risk pending processing of their long form application. This will mitigate the effect of delays occasioned by a spurious petition.

#### **H. Transfer Disclosure Requirements**

57. The Commission tentatively concludes that the transfer disclosure requirements of Section 1.211(a) should apply to all paging service licenses obtained through a competitive bidding process.<sup>104/</sup> This requirement, if adopted, would generally require licensees transferring authorizations within 3 years to file all associated contracts for sale, option agreements, management agreements and all other documents disclosing the total consideration received in return for a transfer of a license. This does not serve any public interest for this competitively sensitive information to be made a matter of public record and may in fact be anti-competitive.

58. At present, there is no requirement that a paging licensee file with the Commission a copy of a contract associated with the purchase and sale of a

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<sup>104/</sup> Notice, paras. 111-112.